

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - April 27, 2015

EVENT DATE: 04/28/2015

EVENT TIME: 09:00:00 AM

DEPT.: C-71

JUDICIAL OFFICER: Ronald S. Prager

CASE NO.: 37-2015-00008725-CU-TT-CTL

CASE TITLE: SAN DIEGO TRANSPORTATION ASSOCIATION VS SAN DIEGO METROPOLITAN
TRANSIT SYSTEM [E-FILE]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Toxic Tort/Environmental

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

The Court rules on plaintiff San Diego Transportation Assn.'s (Petitioner) motion for preliminary injunction as follows:

Respondent San Diego Metropolitan Transit System's Request for Judicial Notice. The request for judicial notice is granted.

Respondent's Evidentiary Objections. The objection to the Hueso Declaration in its entirety is sustained on the ground of improper expert testimony.

Petitioner's Evidentiary Objection. Petitioner's objection to Respondent's request for judicial notice of Exhibit A is overruled.

The Court has discretion to grant or deny a preliminary injunction based on: "(1) the likelihood that the party seeking the injunction will ultimately prevail on the merits, and (2) the balance of harm presented, i.e., the comparative consequences of the issuance and nonissuance of the injunction." (*Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 856.) The burden is on the party seeking the injunction to show all of the necessary elements. (*Id.*; *O'Connell v. Super. Ct.* (2006) 141 Cal.App.4th 1452, 1481.)

Merits. A key issue to be decided in this case is whether the amendment of Ordinance 11 is a project under CEQA. Petitioner contends that the mere adoption of regulations constitutes a project under CEQA if an environmental impact may result.

Public Resources Code section 21065 provides that CEQA applies only to "an activity which may cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...." An activity that does not qualify as a project is not subject to CEQA. (CEQA Guidelines, §15060(c)(3); *Chung v. City of Monterey Park* (2012) 210 Cal.App.4th 394, 401-402.)

Respondent correctly notes that Petitioner failed to cite any cases wherein a court held that taxicab regulations constitute a project under CEQA. On the other hand, Respondent cited to a PUC Order which found that regulations concerning for hire vehicles do not constitute a project under CEQA. (Respondent's Request for Judicial Notice (RJN), Exh. 5)

In addition, the evidence shows that Respondent was performing an administrative function. It is the City of San Diego (City) that sets the public policy regarding taxicab regulation through County Policy 500-02, which was incorporated into Ordinance 11. (Klein Dec., Exh. I, Recital E, ¶3.) Notably, none of the prior

nine amendments to Ordinance 11 required CEQA analysis. (RJN), Exh. A, p. A-006.) Furthermore, Respondent presented evidence that SANDAG is responsible for long-term transportation system planning in the area. (Pub. Res. Code, §120300(g).)

Finally, Petitioner's only provided speculative and unsupported evidence in support of its contention that the amendment to the ordinance would have negative environmental impacts. On the other hand, Respondent provided evidence that the amendment to Ordinance 11 includes criteria for zero or low emissions. As a result, Petitioner has not shown that amended Ordinance 11 will result in an reasonably foreseeable adverse environmental impact.

Balance of Harm. As to Petitioner's contention that its members will suffer economic harm if Respondent is allowed to proceed with the issuance of permits, the Court notes that it has been held that current taxi permit owners do not suffer a regulatory taking when cities grant more people the opportunity to hold taxi permits. (*Luxor Cab Co. v. Cahill* (1971) 21 Cal.App.3d 551, 558; *cf. Cotta v. City & Cnty. of San Francisco* (2007) 157 Cal.App.4th 1550, 1560.) On the other hand, Respondent will be prevented from implementing policy decisions adopted through the democratic process if the injunction is granted. Furthermore, the issuance of an injunction would negatively impact those who have applied for permits by delaying their ability to be issued permits under the amended Ordinance.

Based on the foregoing, the motion is denied.

IT IS SO ORDERED.